Enertech Electrical, Inc. *and* International Brotherhood of Electrical Workers Local 573, AFL–CIO. Case 8–CA–21654

December 16, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On August 31, 1992, Administrative Law Judge Lowell M. Goerlich issued the attached decision. The Charging Party filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[1]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Enertech Electrical, Inc., Lowellville, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

''(a) On request, bargain in good faith with the Union for employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement. The Union's certification year shall extend 1 year from the date that good-faith bargaining begins.''

2. Substitute the attached notice for that of the administrative law judge.

[1] The Charging Party has excepted to the judge's failure to include in his recommended Order a provision extending the Union's certification year for a 1-year period. We find merit in this exception. The Respondent's violations, which include making a series of unilateral changes, failing to provide the Union with the information it requested, and engaging in other overt acts of bad-faith bargaining precluded the Union from engaging in the collective-bargaining process. In these circumstances we find it appropriate to extend the certification year for a 1-year period running from the date that the Respondent begins to bargain in good faith. See *D. J. Electrical Contracting*, 303 NLRB 820 (1991); *Glomac Plastics v. NLRB*, 592 F.2d 94, 100–101 (2d Cir. 1979), enfg. in pertinent part 234 NLRB 1309 fn. 4 (1978).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with International Brotherhood of Electrical Workers Local 573, AFL–CIO in the following appropriate unit:

> All full-time and regular part-time apprentice and journeymen electricians and other employees who perform any type of electrical construction work, including employees who procure and/or transport equipment or materials for us to jobsites in Ohio and Pennsylvania, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT unlawfully refuse to bargain with the Union by refusing timely to furnish requested information relevant and necessary for the Union's function as bargaining representative.

WE WILL NOT unlawfully make unilateral changes in our employees' wages, hours, working conditions, or other conditions of employment concerning mandatory subjects of bargaining without bargaining collectively with the Union in accordance with the requirements of Section 8(a)(5) of the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union for employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody that understanding in a signed agreement. The Union's certification year shall extend 1 year from the date that good-faith bargaining begins.

WE WILL supply the remainder of the information requested in the Union's letters of December 1 and 28, 1988, and January 6, 1989.

WE WILL, on request of the Union, rescind the following named policies or changes that we unilaterally implemented in November 1988, January, July, and December 1989, and February 1990; adjustments in apprentice's wages, new pension plan, change in wages and working conditions for its employees employed on a General Motors Lordstown job, bonus paid to employees, and a new hospital and life insurance plan for employees including apprentices and WE WILL reimburse our employees for any losses which they have

suffered by reason of our unilateral changes together with interest in accordance with the Board's usual policy.

ENERTECH ELECTRICAL, INC.

Charles C. Adamson, Esq., for the General Counsel.
Tim Tusek, Esq., of Youngstown, Ohio, for the Respondent.
Anthony P. Sgambati, II, Esq., of Youngstown, Ohio, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LOWELL M. GOERLICH, Administrative Law Judge. The charge in this case, filed by International Brotherhood of Electrical Workers Local 573, AFL–CIO (the Union), on March 7, 1989, was served by certified mail on Enertech Electrical, Inc. (Respondent), on March 8, 1989. A complaint and notice of hearing was issued on April 21, 1989. On July 13, 1989, the parties entered into a settlement agreement which I approved. Thereafter, pursuant to motion to conduct hearing and set aside settlement agreement filed by the Charging Party, a hearing was held before me on December 12 and 13, 1990. On April 5, 1991, I issued a ruling on Charging Party's motion in which I found that Respondent had engaged in certain unlawful unilateral activity which constituted a violation of the Act and thereby vacated and set aside the settlement agreement.

Thereafter the General Counsel issued an amended complaint on April 14, 1992, in which it is alleged that among other things Respondent unlawfully withheld information requested by the Union, unlawfully effected unilateral changes in working conditions, attempted to set unreasonable conditions as a prerequisite to the commencement of collective-bargaining agreement negotiations and bargained in bad faith to avoid an agreement, all in violation of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act).

The Respondent filed a timely answer denying that it had engaged in the unfair labor practices alleged.

Hearings were held on July 13, 1989, December 12 and 13, 1990, and May 11, 1992.

Each party was afforded a full opportunity to be heard; to call, examine, and cross-examine witnesses; to argue orally on the record; to submit proposed findings of fact and conclusions of law; and to file briefs. All briefs have been carefully considered.

FINDINGS OF FACT AND REASONS THEREFOR

I. THE BUSINESS OF RESPONDENT

At all times material, Respondent, an Ohio corporation, with an office and place of business in Lowellville, Ohio (Respondent's facility), has been engaged in the business of electrical contracting.

Annually, Respondent, in conducting its business operations described above, purchased and received at its Lowellville, Ohio facility goods valued in excess of $50,000 directly from points outside the State of Ohio.

At all times material Respondent has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

At all material times the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

First: The parties stipulated ''that the transcript in this matter, 8–CA–21654, for December 12, 1990 and December 13, 1990 running from pages 1 through 280 including 70–1 be included as part of the record in this matter.''

From this transcript I found that Respondent set wages and working conditions on a General Motors Lordstown job in July 1989 without negotiating with the Union. Adjustments in apprentice's wages were made in November 1988 without negotiating with the Union. The Respondent put a new hospitalization plan in effect on February 1, 1990, without negotiating with the Union. In the plan among other things ''the life insurance benefit covering for journeymen and electricians was improved,'' ''deductibles'' were changed, as well as various other benefits. The Respondent also covered the apprentices under the hospitalization plan without bargaining with the Union. Also Respondent did not negotiate with the Union over the implementation of a new pension plan about the payment of the December 1989 bonus.

These findings and the credible record support these allegations of unilateral changes in the amended complaint:

> On or about November, 1988, Respondent adjusted apprentices wages.
>
> On or about January 1, 1989, implemented a pension plan.
>
> On or about July, 1989, changed wages and working conditions for its employees employed on a General Motors Lordstown job.
>
> On or about December, 1989, paid a bonus to employees.
>
> On or about February 1, 1990, implemented a new hospitalization and life insurance plan for employees, including apprentices.

These unilateral changes in conditions of employment under negotiations, mandatory subjects of bargaining, and without prior notice to the Union and without affording the Union an opportunity to bargain with Respondent in respect thereto were in violation of Section 8(a)(1) and (5) of the Act. *NLRB v. Katz*, 369 U.S. 736 (1962). I so find.

Second: In three letters dated December 19 and 28, 1988, and January 1, 1989, the Union requested information. The Respondent supplied some of the requested information. According to the Union's letter of February 18, 1989, Respondent had not furnished the following information concerning jobsites on which Enertech had worked since January 1, 1988, the names of journeymen and apprentice electricians employed in each site, the hours worked by each individual and the fringe benefits provided, and information of prospective jobs on which bargaining unit employees will be employed in the next 6 months. (Location, start date, duration of job, number of employees needed.) This information was

never furnished by Respondent[1] nor was the social security number of the employees.

Robert H. Doan, assistant business manager for the Union, described the need for this information:

> Well, prior to bargaining we have to know that the general locations in the areas that the people are going to work in, as far as where the job site will be, so we can refer people there. As far as the negotiations we felt that we needed this, if there was going to be travel pay involved or any other similar circumstances.

The Respondent worked sites in Ohio, West Virginia, and Pennsylvania. The Union was located in Trumbull County, Ohio.

Doan further testified:

> Well, I feel, personally, that if we're going to do a good job of collective bargaining or representing employees or the members of the local union or any other group that we are trying to represent, that we need the adequate information to negotiate a fair contract for them.

Chief Union Negotiation Attorney Sgambati testified on the same subject as follows:

> The purpose of the request was so that the Union could obtain information concerning the bargaining unit members employed by Enertech Electrical so that the Union could properly represent them in negotiations and otherwise, and develop meaningful proposals that fit their employment circumstances.
>
> . . . .
>
> Since this was, shall I say, a unique bargaining unit, at least to this Union's experience, it needed to know information concerning the employees that Enertech utilized as well as the locations at which they worked, their job classifications and the working conditions which they enjoyed at the locations at which they worked which were outside of the typical jurisdictions serviced by Local 573.

The Respondent refused to furnish the requested information which it deemed not relevant.

For the reasons stated by the union representative I find that the information requested by the Union was relevant to its representational functions and that Respondent's failure to timely provide the requested information violated Section 8(a)(5) and (1) of the Act. See *Bi-County Wholesale Beverage Distributors*, 291 NLRB 466 (1988). See *Ironton Publications*, 294 NLRB 853 (1989), *J.D. Stokley Co*., 295 NLRB 1076 (1989).

Third: Alleged bad-faith bargaining. The General Counsel alleges,

> Respondent, on or about March 3, 1989, during negotiations with the Union, by its President Ralph Conti stated (1) that the parties were aware that the law does not require him to agree to anything; (2) that if he did not want a contract with the Union, he did not have to have one; and (3) that if he did not like the Union members' qualifications, he would not sign a contract.

''Respondent, on or about March 3, 1989, during negotiations with the Union, Respondent's President Ralph Conti rejected the Union's entire contract proposal and refused to provide the Union with any counterproposals.'' These allegations are supported by credible evidence.

At the first negotiation meeting on February 22, 1989, the Union offered its contract proposal which was taken by the Respondent for further consideration. Ralph Conti demanded the following information on February 21, 1989:

> In our previous discussions, you have indicated that you were considering supplying employees out of other IBEW Locals in addition to Local #573. Therefore, in order to continue our negotiations, I request that the following information be provided so that I may determine whether or no the people you would supply to my request are qualified to install electrical work which would meet my expectations.
>
> All names, social security numbers, years of experience, years of apprentice training, individual jobs each man worked on, employees each man worked for along with employer's address, status of health or physical handicap of each man and a resume of each man along with at least two references.
>
> I need the above information in each Foreman, Journeyman and Apprentice for all IBEW union members from IBEW Local in both Ohio and Pennsylvania which covers the area which has been designated by the NLRB as our work jurisdiction.
>
> This information requested is relevant and must be provided to me so that I can determine the ability of your people who would represent my Company's reputation.
>
> It is also relevant and must be provided to me if the union is to fulfill it's statutory obligation to bargain in good faith with my firm.

Doan testified Conti said that ''he needed this type of information to receive a contract or to negotiate a contract with us.'' Lisa Donofrio, a Respondent negotiator, testified that her father wanted this information because her father did not want any employees from Local 64, and ''we wanted to know who was going to be our choices . . . we needed to know where these people lived, how they were going to travel there.''[2]

The parties met again on March 2, 1989. Attorney Anthony P. Sgambati was the chief negotiator for the Union; Ralph Conti was the chief negotiator for Respondent. According to Doan, Conti said ''he needed to know everything about all our members if there was to be a contract signed. . . . [T]he law . . . doesn't require me to sign an

[1] In the settlement agreement Respondent agreed to furnish information ''as to all bid jobs and those jobs which require 160 labor hours or more.'' The record is unclear as to whether Respondent furnished such information.

[2] The settlement agreement provided that ''Local 573 will provide Enertech Electric with the names of its members, their initiation date, which should reflect their years of experience, the city and state of their residence and whether or not they have completed an apprenticeship program.''

agreement and if I don't want an agreement with you, I don't have to have one.''

Sgambati testified (which is reflected in the minutes of the meeting which he had taken) that he told Conti that ''he had the right to reject any applicant which we sent through the hiring hall and that possible [sic] we could supply him with the information that he wanted at the time of referral. Because then we would be able to identify the individuals who were being referred. . . . He rejected that suggestion'' and said, ''I know that the law doesn't require me to agree to anything and if I don't want a contract with you, I don't have to have one. And unless I'm satisfied with all the qualifications of the members, I don't intend to sign a contract.''

According to Sgambati, Conti rejected every section of the contractual proposal Conti said, ''I reject them all.''[3] Conti said he had no counterproposals. Sgambati then asked, ''if you don't have any counterproposal, what are we doing here.'' He answered, ''I am here.'' Sgambati continued ''as far as I was concerned if he wasn't prepared to give us any counterproposals, there was no reason to continue on with the meeting.'' That ended the meeting.

Donofrio testified that the reason Respondent did not come with a counterproposal ''we thought we were going to go through the IBEW's proposal first and then make a counterproposal of all those things we did not agree with.'' Conti's rejection of the entire union proposal stymied that approach.

Thereafter, on March 7, 1989, the Union filed unfair labor practice charges alleging refusal to bargain collectively.

During the period Respondent was obligated to bargain in good faith including the time it was obligated to bargain in good faith pursuant to the provisions of the settlement agreement, the credited facts reviewed above reveal that Respondent did not meet this obligation and that the allegation of the General Counsel's complaint, to wit, that Respondent ''engaged in course of conduct constituting bad faith bargaining, including, evasive obstructive and other conduct having for its real objective avoidance of any agreement'' is well taken. I find Respondent guilty of bargaining in bad faith. Conti's approach to collective bargaining was the antithesis of good-faith collective bargaining. At the same time he was sending his representatives to the collective-bargaining table, he was making unilateral changes in the working conditions of employees. The reasonably foreseeable consequence of Respondent's unfair labor practices, away from the bargaining table, combined with Conti's approach to collective bargaining at the table, was calculated to frustrate agreement and to avoid an agreement with the Union. Accordingly, Respondent violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and it will effectuate the purpose of the Act for jurisdiction to be exercised.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time apprentice and journeymen electricians and other employees of Respondent who perform any type of electrical construction work, including employees who procure and/or transport equipment or materials for the Respondent to jobsites in Ohio and Pennsylvania, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

4. At all times the Union has been the exclusive representative of all the employees in the above unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to bargain collectively with the Union in good faith the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

6. By refusing to bargain collectively with the Union by refusing to furnish the Union timely information requested in its letters of December 19 and 28, 1988, and January 6, 1989, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

7. By unilaterally making changes in its employees' wages, hours, working conditions, or other conditions of employment concerning mandatory subjects of bargaining without bargaining collectively with the Union in accordance with Section 8(a)(5) of the Act, Respondent engaged in, and is engaging in, unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

The unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

It having been found that Respondent had engaged in certain unfair labor practices, it is recommended that it cease and desist and take certain affirmative action necessary to effectuate the policies of the Act. It is further recommended that Respondent restore the status quo ante of all unilateral changes.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Enertech Electrical, Inc., Lowellville, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

[3] Sgambati testified:

> I [union negotiator] asked him [Conti] if there were any provisions of any proposals which had been made in the package presented on the 22nd which he accepted. He said, ''I reject all of them. I reject them all.'' I said, ''are you saying that every provision that we've proposed you are rejecting?'' He said, ''I reject them all.'' I then said, ''well, do you have counterproposals to the proposals which we've made?'' He said, no. I repeated the question ''are you saying you have no counterproposals?'' He said, ''I have none.'' [Tr. 19–20.]

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided by Sec. 102.48 of the Rules, be adopted by the Board and all exceptions to them shall be deemed waived for all purposes.

(a) Refusing to bargain collectively in good faith with International Brotherhood of Electrical Workers Local 573, AFL–CIO in the following appropriate unit:

> All full-time and regular part-time apprentice and journeymen electricians and other employees of Respondent who perform any type of electrical construction work, including employees who procure and/or transport equipment or materials for Respondent to jobsites in Ohio and Pennsylvania, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

(b) Refusing to bargain with the Union by failing or refusing to furnish timely requested information relevant and necessary to the Union's performance of its function as bargaining representative.

(c) Unilaterally making changes in its employees' wages, hours, working conditions, or other conditions of employment concerning mandatory subjects of bargaining without bargaining collectively with the Union in accordance with the requirements of Section 8(a)(5) of the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of Act.

(a) On request, bargain in good faith with the Union for employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding is a signed agreement.

(b) Supply the remainder of the information concerning matter requested in the Union's letters of December 19 and 28, 1988, and January 6, 1989.

(c) On request of the Union rescind the following named new polices or changes that were unilaterally implemented in November 1988, January, July, and December 1989, and February 1990; adjustments in apprentice's wages, a new pension plan, changed wages and working conditions for its employees employed on a General Motors Lordstown job, bonus paid to employees, a new hospital and life insurance plan for employees, including apprentices, and reimburse employees for any loss suffered by them by reason of the unilateral changes together with interest in accordance with the Board's usual policy and comply fully with the remedy.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Lowellville, Ohio, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

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[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''